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In Re the Matter of

QUALCOMM, Incorporated

Petition for Waiver of Auction Discount Voucher
Terms and Conditions

Summit Wireless, LLC (“Summit”), by counsel, hereby submits its comments in support of the referenced QUALCOMM, Incorporated (“QUALCOMM”) Petition for Waiver (“Petition”) submitted to the Commission on August 1, 2002.¹ For the reasons set forth below, Summit urges the Commission to grant the subject request.

In its Petition, QUALCOMM explained that its Auction Discount Voucher (“ADV”) was awarded as a substitute for an award of a pioneers’ preference for a specific license that was no longer available. Petition, at 2. Thus, it was an entitlement rather than some form of largess. The ADV was to be used within three years of issuance, and could be transferred to third parties so long as such parties (or “QUALCOMM”), if the ADV was not transferred, use the ADV to further development and application of Code Division Multiple Access (“CDMA”) technology. Petition, at 3. The award of the ADV did not address its use as offsetting installment payment obligations. However, the applicable policy pronouncements on the ADV suggest that the parties

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to the ADV proceeding assumed that it would be used in future auctions and it was expressly provided that it could not be used to make up-front payments default payments or withdrawal payments. Petition, at 4.

II. Discussion

A. GRANT OF THE RELIEF QUALCOMM SEEKS WOULD SERVE THE PUBLIC INTEREST

In the final analysis, in ruling on petitions such as the subject one, the Commission's overarching responsibility is to further the public interest.² QUALCOMM, in its Petition, clearly demonstrated that the state of the industry is such that it needs help now! Petition, at 8-9. QUALCOMM is hardly alone in taking that position. See, e.g. Chairman Powells comments before the U.S. Senate when he explained that:

[c]learly, the telecommunications industry is riding on very stormy seas. This is an industry where nearly 500, 000 people in the United States alone have lost their jobs and approximately \$2 trillion of market value has been lost in the last two years. By some estimates, the sector is struggling under the weight of \$1 trillion in debt. And most segments have seen precipitous declines in stock value: The long distance industry is down 68% year-to-date, the wireless industry is down 71%, and ILECS are down 40%. Clearly, there are serious stresses on this important industry.³

It is estimated that telecommunications companies worldwide are carrying \$1 trillion in debt, much of which will never be repaid ... capital markets are retrenching, and the telecommunications companies in need of financing to support their capital-intensive enterprises are suffering.⁴

These unassailable, and unprecedented, facts demonstrate the existence of unique and unusual circumstances relevant to QUALCOMM's Petition. They also evidence that the Commission never had these types of circumstances in mind when it established its guidelines

² See e.g. *Wait Radio v. FCC*, 418 F^{2nd} 1153 (D.C. Cir. 1969)

³ Written statement of Michael K. Powell, Chairman, Federal Communications Commission on "Financial Turmoil in the Telecommunications Marketplace: Maintaining the Operation of Essential Communications", before the Committee on Commerce, Science, and Transportation, United States Senate, July 30, 2002, 6-7.

for use of the ADV, and thus that the objectives behind those policies would not be frustrated by grant of a waiver in this instance. In fact, in the absence of waiver grant here, rigid adherence to the rules would undermine their objectives.

B. WITHIN THE DESIGNATED ENTITY LICENSEE UNIVERSE, CONDITIONS ARE PARTICULARLY CHALLENGING

As of the five year anniversary of grant of designated entity (“DE”) licenses, the vast majority of the licenses had been transferred one or more times, were subject in one way or another to bankruptcy protections, or had become loosely affiliated with larger carriers.⁵ There are, however, several licensees, like Summit, who qualify as DEs, have built out their licenses and who have remained independent. For these licensees, reduced expenses associated with economies of scale are not fully available, roaming revenues are often limited by virtue of their not being able to offer prospective roaming partners with a large roaming footprint, and the latest equipment and service options are usually not readily available. In short, these licensees are often competitively disadvantaged – but still have considerable payment obligations to the Commission.

The Commission can and should assist this class of DE licenses. Such action would be consistent with overall congressional mandates when the Commission was first provided with such authority⁶ and with recent presidential pronouncements regarding the need for federal

⁴ *Id* at 11.

⁵ In the C block alone, approximately 65% of all licenses awarded were awarded to entities that were or are in bankruptcy.

⁶ See 47 USC § 309 (j)(3)(B)

agencies to aid small businesses.⁷ It would also afford customers with greater wireless choice and reduce somewhat the carnage that DE licensees face in today's difficult economic times.

C. GRANT OF THE QUALCOMM REQUEST WOULD BE CONSISTENT WITH THE SPIRIT OF NEGOTIATIONS LEADING TO THE AWARD OF THE ADV

When the Commission granted QUALCOMM the ADV, both parties envisioned there being sufficient opportunity for QUALCOMM to use the ADV before it expired. Afterall, a large 700 MHz auction was planned and what was to become Auction No. 34 was at least contemplated as a realistic scenario. With the benefit of hindsight, it is not clear that neither of these processes has provided QUALCOMM any practical opportunity to utilize its ADV efficiently. With respect to Auction No. 35, QUALCOMM made arrangements for one high bidder to utilize the ADV. Then the licenses that were "won" were returned to the initial licensee, and the ADV could not be utilized. Insofar as the 700 MHz auction opportunity is concerned, to date it has been delayed and fragmented, time after time, and there is no reason to believe that this pattern will change drastically and that 700 MHz will offer any genuine opportunity for ADV use.

In view of this reduction in anticipated opportunity for use of ADV, it is only fair and fitting that there be a corresponding expansion of opportunity, in the form of permitting the ADV to be used to retire installment payment debt.

III. Conclusion

In view of the foregoing, Summit urges the Commission to grant the relief request by QUALCOMM. Such relief would serve the public in a number of ways. First and foremost, it would make available badly needed aid to the beleaguered DE licensee community. Second, it

⁷ See Executive Order entitled "Proper Consideration of Small Entities in Agency Rulemakings" signed by President

would invigorate the Wireless industry generally and would enhance consumer choice in a number of markets especially small ones. Lastly, it would reinforce the integrity of the Commission's bargaining process surrounding the ADV generally.

Respectfully submitted,

SUMMIT WIRELESS, LLC

By: 

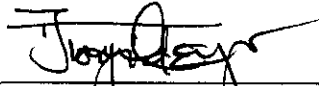
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CERTIFICATE OF SERVICE

I, Funmi Feyide, a law clerk in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 30th day of August, 2002, sent by hand-delivery, copies of the foregoing Comments in Support of Petition for Waiver of Auction Discount Voucher Terms and Conditions to the following:

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